

### **REMARKS**

Applicant expresses appreciation to the Examiner for consideration of the subject patent application. This amendment is in response to the Office Action mailed March 24, 2004. Claims 1-68 were subject to restriction and/or election requirement. The claims have been amended to address the concerns raised by the Examiner.

Claims 1-68 were originally presented. Claims 1-33 and 41-68. Claims 34-40 have been canceled without prejudice.

#### **Election/Restriction Requirements:**

In response to the restriction requirement of March 24, 2004, the Applicant elects the group of claims 1-33 and 41-68.

In response to the election requirement of March 24, 2004, the Applicant provisionally elects, with traverse, species III. The claims readable thereon being claims 14 and 54. Upon allowance of a generic claim, Applicant is entitled to consideration of claims to additional species.

The Applicant respectfully traverses the election requirement for the following reasons. In the present application, the primary novel concept is found within independent claims 1 and 41. The particular measurements included in claims 12-14 and 52-54 are merely slight variations of the generic concept as set forth in claims 1 and 41. As recognized in the MPEP § 806.04(d), 3<sup>rd</sup> paragraph, multiple species can be included in the same case where they contain all of the limitations of the generic claim. Here, the species I-III all contain each of the limitations of the generic concept claimed in claims 1 and 41. For example, a search for a speaker device having a rigid emitter plate, a thin piezoelectric film and a pressure means (as claimed in claims 1 and 41) would reveal all such speakers, irregardless of the slight variations in measurements of claims 12-14 and 52-54.

Furthermore, an election requirement among Species I-III is particularly unavailing, considering that the claimed material from Species I and II is contained within the claimed material from Species III. In particular, the piezoelectric film thickness of 9 and 12 microns, as claimed in Species I and II, is "less than 25 microns", as is claimed in Species III. The aperture

diameter of .160 and .168 inches and as claimed in Species I and II, is "less than .600 inches", as is claimed in Species III. The positive biasing pressure of 5 and 6 pounds, as claimed in Species I and II, is "less than 12 pounds", as is claimed in Species III. Finally, the resonant frequency of approximately 35 kHz as claimed in Species I and II, is contained within the range of approximately 35 kHz to 60kHz, as is claimed in Species III. Therefore, not only is the election requirement as proposed by the Examiner inappropriate, but is also unnecessary.


### CONCLUSION

In light of the above, Applicant respectfully submits that pending claims 1-33 and 41-68 are now in condition for allowance. Therefore, Applicant requests that the election requirement be withdrawn, and that the claims be allowed and passed to issue. If any impediment to the allowance of these claims remains after entry of this Amendment, the Examiner is strongly encouraged to call Vaughn North at (801) 566-6633 so that such matters may be resolved as expeditiously as possible.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 20-0100.

DATED this 16 day of Apr, 2004.

Respectfully submitted,



Vaughn W. North  
Registration No. 27,930  
M. Wayne Western  
Registration No. 22,788  
Garron M. Hobson  
Registration No. 41,073

THORPE NORTH & WESTERN, LLP  
Customer No. 20,551  
P.O. Box 1219  
Sandy, Utah 84091-1219  
Telephone: (801) 566-6633